



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
**Chairman**

**Washington, DC 20515**

**John L. Mica**  
**Ranking Republican Member**

David Heymsfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

February 8, 2008

James W. Coon II, Republican Chief of Staff

The Honorable J. Richard Capka  
Federal Highway Administration  
1200 New Jersey Ave., SE  
Washington, DC 20590

Dear Administrator Capka:

As the Federal Highway Administration ("FHWA") prepares to implement the rescission of unobligated highway program contract authority called for in the Consolidated Appropriations Act, 2008 (P.L. 110-161 or the "Appropriations Act"), we want to call your attention to Section 1132 of the Energy Independence Security Act of 2007 (P.L. 110-140 or the "Energy Act").

This provision of the Energy Act stipulates procedural guidelines, in advance, for distribution of any subsequent rescissions of unobligated highway program contract authority which may occur during Fiscal Years 2008 and 2009. Specifically, the Act requires that in implementing rescissions, states not disproportionately rescind funds from any program.

We have been very concerned with the way states have been implementing previous rescissions of unobligated highway program contract authority. States currently have significant unobligated balances of contract authority available across all categories of the Federal-aid highway program, and have significant flexibility among apportioned highway programs. Yet, States have consistently chosen to target specific programs for disproportional cuts in implementing rescission.

Specifically, States have chosen to apply previous rescissions by disproportionately cutting contract authority from a few specific programs. For example, while Congestion Mitigation and Air Quality Improvement ("CMAQ") program funds represent only about 4-5 percent of highway apportionments each year, CMAQ funds have accounted for approximately 20 percent of total highway funds rescinded in recent years. In FY 2006 alone, almost one of every four dollars rescinded by the States in FY 2006 came from the CMAQ program. Other programs, such as the Highway Bridge Program and transportation enhancement funds, have similarly been targeted by States in implementing highway contract authority rescissions. Such predatory targeting of unobligated contract authority from a limited number of programs undercuts our ability to mitigate the impact of surface transportation on air quality and the environment, and to provide a variety of modal options. It also undermines the priorities established by Congress in SAFETEA-LU.

Honorable J. Richard Capka  
February 8, 2008  
Page Two

The inclusion of the Section 1132 language is intended to mitigate the impact of this predatory targeting of specific programs. While recognizing the need for States to have flexibility in implementing their highway programs, this provision will ensure that a limited number of programs do not bear a disproportional burden in the application of rescissions.

The Consolidated Appropriations Act, 2008, which was enacted subsequent to the Energy Act, contained in the Conference Report highway contract authority rescissions in the amount of \$3,150,000,000. Though the appropriations provision explicitly exempts a few unique programs from this rescission, all other highway programs will be subject to this rescission in Fiscal Year 2008. As such, these rescissions must be distributed consistent to Section 1132 of the Energy Act.

The requirement in the Energy Act that the rescissions in the Appropriations Act be distributed proportionally will ensure that the priorities set by Congress in SAFETEA-LU are implemented as intended. Attached is a Memorandum from the Congressional Research Service that concurs in this view. We greatly appreciate your attention to these concerns.

Sincerely,



James L. Oberstar, M.C.  
Chairman  
Committee on Transportation  
and Infrastructure



Peter A. DeFazio, M.C.  
Chairman  
Subcommittee on Highways  
and Transit



## **Memorandum**

January 16, 2008

**TO:** House Subcommittee on Highways and Transit  
Attention: Amy Scarton

**FROM:** Virginia A. McMurtry *VAM*  
Specialist in American National Government  
Government and Finance Division

**SUBJECT:** Assessment of Two Rescission Provisions

This memorandum responds to your request for a written account of our recent conversations regarding two rescission provisions enacted in 2008 and pertaining to Highway Trust Fund appropriations.

To start with a definition, a rescission is a permanent cancellation of budget authority previously provided in an appropriations measure. Under the Impoundment Control Act of 1974 (88 Stat. 332), the President is authorized to send rescission requests to Congress, but the funds have to be released after 45 days of continuous session unless Congress has taken legislative action to approve of the request. Congress on its own accord may initiate rescission actions by cancelling previously appropriated funds in a subsequent law.<sup>1</sup>

With regard to the rescission provisions you identified for assessment, the first comes from the Energy Independence and Security Act of 2007 (P.L. 110-140, signed into law December 19, 2007), an omnibus energy policy measure. This is the relevant provision:

**Sec. 1132. Distribution of Rescissions**

(a) In General- Any unobligated balances of amounts that are appropriated from the Highway Trust Fund for a fiscal year, and apportioned under chapter 1 of title 23, United States Code, before, on, or after the date of enactment of this Act and that are rescinded in fiscal year 2008 or fiscal year 2009 shall be distributed by the Secretary of Transportation within each State (as defined in section 101 of such title) among all programs for which funds are apportioned under such chapter for such fiscal year, to the extent sufficient funds remain available for obligation, in the ratio that the amount of funds apportioned for each program under such chapter for such fiscal year, bears to the amount of funds apportioned for all such programs under such chapter for such fiscal year.

---

<sup>1</sup> For further discussion, see CRS Report RL33869, *Rescission Actions Since 1974: Review and Assessment of the Record*, by Virginia A. McMurtry.

(b) Adjustments- A State may make adjustments to the distribution of a rescission within the State for a fiscal year under subsection (a) by transferring the amounts to be rescinded among the programs for which funds are apportioned under chapter 1 of title 23, United States Code, for such fiscal year, except that in making such adjustments the State may not rescind from any such program more than 110 percent of the funds to be rescinded from the program for the fiscal year as determined by the Secretary of Transportation under subsection (a).

(c) Treatment of Transportation Enhancement Set-Aside and Funds Suballocated to Substate Areas- Funds set aside under sections 133(d)(2) and 133(d)(3) of title 23, United States Code, shall be treated as being apportioned under chapter 1 of such title for purposes of subsection (a).

The second provision you identified is found in the Consolidated Appropriations Act, 2008 (P.L. 110-161, signed December 26, 2007). This measure encompassed 11 of the 12 regular appropriations bills for FY 2008 along with several other provisions. The relevant excerpt reads as follows:

(RESCISSION)  
(HIGHWAY TRUST FUND)

Of the unobligated balances of funds apportioned to each State under chapter 1 of title 23, United States Code, \$3,150,000,000 are rescinded: Provided, That such rescission shall not apply to the funds distributed in accordance with sections 130(f) and 104(b)(5) of title 23, United States Code; sections 133(d)(1) and 163 of such title, as in effect on the day before the date of enactment of Public Law 109-59; and the first sentence of section 133(d)(3)(A) of such title. (H.R.2764 ENR p. 541).

The relationship between the two laws may be characterized in the following manner. Section 1132 in the Energy Act ( P.L. 110-140) is not a rescission, since no cancellation of budgetary authority is involved. Rather, Section 1132 stipulates procedural guidelines, in advance, for distribution by the Secretary of Transportation of any subsequent rescissions from Highway Trust Fund appropriations which may occur during FY2008 and FY2009. The funds rescinded need not come from FY2008 or FY2009 appropriations to be covered by the procedural guidelines, however. Section 1132 (a) stipulates that any unobligated balances of amounts appropriated from the Highway Trust Fund for a fiscal year and apportioned “before, on or after the date of enactment” of the Energy Act, and that are rescinded in FY 2008 or FY 2009, are to be distributed by the Secretary of Transportation according to the means prescribed in the Energy Act.

In contrast, the provision in the 2008 Consolidated Appropriations Act (P.L. 110-161) constitutes a congressionally initiated rescission. A total of \$3,150,000,000 is to be cancelled out of the unobligated balances from the Highway Trust Fund already apportioned to each state. The “Provided” clause then exempts some programs, so that they are protected, in effect, from receiving any budgetary reductions in the implementation of the rescission. No particular fiscal year is designated as the source of funds to be rescinded. The funds rescinded pursuant to the 2008 Consolidated Appropriations Act might come from any available unobligated balances appropriated from the Highway Trust Fund, provided that two requirements are met: the rescission must be carried out during FY2008, and cancellations must total \$3.15 billion. Since this rescission action is to occur during FY2008, the procedural guidelines in Section 1132 of the Energy Act appear to apply.

I hope that this explanation proves useful. If I may be of further assistance, please contact me by phone ( 7-8678) or by email ([vmcmurtry@crs.loc.gov](mailto:vmcmurtry@crs.loc.gov)).